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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,813	06/29/2001	Jules Jakob Vos	27224-701	1596

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EXAMINER

HIRL, JOSEPH P

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,813

Applicant(s)

VOS, JULES JAKOB

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 6.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-26 are pending in this application.
2. The First Office Action of February 23, 2004 is fully incorporated into this Final Office Action by reference.
3. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.
4. Examiner's Opinion:

This supplemental action is relevant to the coincident filings of this application together with applications 09/895,854 and 09/896,138 on June 29, 2001 and wherein the material of each of the filings is similarly disclosed albeit with different inventors but with common ownership. Applicant should review and determine that the declaration of inventorship of this application is indeed accurate.

Provisional Obviousness Double-Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 21 and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 14, and 20 of copending Application No. 09/895,854. Although the conflicting claims are not identical, they are not patentably distinct from each other because the group functionality by division has a non distinguishing effect on the methodology.

Assessments, weighting and evaluation accomplish the same effect. Computer system have logic functionality.

7. Claim 3 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 and 11 of copending Application No. 09/896,138. Although the conflicting claims are not identical, they are not patentably distinct from each other because applying para 2 above, "direct entry" is a non distinguishing term having no effect on the data received ... all evaluations received go to the computer. Further, the distinction of a first and second set of individuals is also non distinguishing since it is only the assessment or evaluation methodology the effects the data. Finally, weights effecting criteria effected by evaluation on attributes is non distinguishable from assessment (weights) effecting criteria effected by evaluations on attributes.

8. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Specification

9. Page 2, line 3: delete "an application" and insert –U. S. Patent Application No. 09/895,854--.

Page 2, line 5: delete "an application" and insert –U. S. Patent Application No. 09/895,138--.

These objections must be corrected.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The terms "fifth set" and "sixth set" are not identified in the specification.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 9 cite the term "some" and claims 15 and 16 cite the term "fewer" all of which are relative terms and render the claims indefinite.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Stratmann (U.S. Patent 5,717,865, referred to as **Stratmann**).

Examiner's Note (EN): Para 2 above applies. User(s) and sets of individuals, first set of individuals, second set of individuals, third set of individuals, etc. are synonymous...they are all users participating in a decision making process. What is invented is the embodied methodology related to the process of decision making. Segregating the individuals is merely establishing the process of decision making. Alternatively, if the invention involved the specificity of individuals, such an invention would not be statutory since it would violate the principal of concreteness required under 35 USC 101.

Claim 1

Stratmann anticipates receiving, in a computer system, a set of alternative choices (**Stratmann**, c 2, l 40-41); receiving, in the computer system, a set of criteria by which the set of alternative choices may be evaluated (**Stratmann**, c 2, l 44-45); receiving, in the computer system via a data network coupled to the computer system, a set of weights sent to the computer system by a first set of individuals via the data network, each weight indicating importance of a corresponding criterion from the set of criteria (**Stratmann**, c 2, l 48-50; Fig. 1); receiving, in the computer system via the data network, a set of evaluations sent to the computer system by a second set of individuals, each evaluation corresponding to possible attributes of a corresponding

criterion (**Stratmann**, c 2, l 50-52); and based on the set of evaluations and the set of weights, providing a relative analysis of the alternative choices (**Stratmann**, c 2, l 57-63).

Claims 2, 22

Stratmann anticipates relative analysis of the alternative choices comprises ranking the alternatives based on a score derived from a weighted combination of the evaluations, the weighted combination of the evaluations being based on the weights (**Stratmann**, c 2, l 35-63).

Claim 3

Stratmann anticipates the evaluations comprise pairwise comparison (**Stratmann**, c 2, l 35-63; EN: para 2 above applies; the numerical score for each alternative provides pairwise comparison between the value at alternative “n” and the value at alternative “n+1”).

Claim 4

Stratmann anticipates evaluations comprise direct entry (**Stratmann**, c 2, l 48).

Claim 5

Stratmann anticipates the evaluations comprise multiple choice (**Stratmann**, c 2, l 35-63; EN: para 2 above applies; the numerical score for each alternative provides multiple choice since “n + 1” alternative scores will be determined).

Claims 6, 23

Stratmann anticipates wherein receiving, via the data network, comprises receiving, in a server application, a datastream, in XML protocol, from the respective

individual, the datastream being entered in a world wide web client application (**Stratmann**, c 3, l 24-35; Fig. 1; EN: para 2 above applies; network, world wide web, datastream are synonymous; computers are servers; arrangement of information (data) on the network lines is standard (extensible markup language protocol).

Claim 7

Stratmann anticipates wherein the computer system comprises a multi processor computer (**Stratmann**, c 3, l 24-35; Fig. 1; EN: para 2 above applies; to one of ordinary skill in the art, the central processing unit performs fetch, decode and execute operations; part of the central processing unit is an arithmetic unit or arithmetic processor; Stratmann has a central processing unit and an arithmetic processor; multi processor system).

Claim 8

Stratmann anticipates some, but not all, weights in the set of weights are received after receipt of at least some of the evaluations in the set of evaluations (**Stratmann**, c 3, l 59-61; EN: para 2 above applies; since decision components are stored both locally and externally, some weights would arrive at a later point in time).

Claim 9

Stratmann anticipates some, but not all, evaluations in the set of evaluations are received after receipt of at least some of the weights in the set of weights (**Stratmann**, c 3, l 59-61; EN: para 2 above applies; since decision components are stored both locally and externally, some evaluations would arrive at a later point in time).

Claim 10

Stratmann anticipates set of criteria is sent to the computer system by a third set of individuals via the data network (**Stratmann**, c 2, l 44-45; Fig 1; EN: para 2 above applies; user(s) are synonymous with third set of individuals).

Claim 11

Stratmann anticipates set of criteria is sent to the computer system by a fourth set of individuals via the data network (**Stratmann**, c 2, l 44-45; Fig 1; EN: para 2 above applies; user(s) are synonymous with fourth set of individuals).

Claim 12

Stratmann anticipates one or more individuals of the first set of individuals is a member of the second set of individuals (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; user(s) are synonymous with individuals; a preference for a particular car among two users would not advance to agreement among colors for the same car).

Claim 13

Stratmann anticipates no individual is a member of both the first and second sets of individuals (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; user(s) are synonymous with individuals; a voting preference would isolate two users).

Claim 14

Stratmann anticipates each of the individuals in the first set of individuals provides a weight for each of the criteria (**Stratmann**, c 2, l 48-50; EN: para 2 above applies; user(s) are synonymous with individuals).

Claim 15

Stratmann anticipates one or more individuals in the first set of individuals provides weights for fewer than all the criteria in the set of criteria individuals (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; user(s) are synonymous with individuals; a preference for a particular car among two users would not advance to agreement among colors for the same car; a black car would receive zero weight from a user).

Claim 16

Stratmann anticipates one or more individuals in the second set of individuals provides evaluations for fewer than all the criteria in the set of criteria (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; user(s) are synonymous with individuals; a voting preference would isolate two users).

Claim 17

Stratmann anticipates each of the individuals in the second set of individuals provides an evaluation for each of the criteria (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; user(s) are synonymous with individuals; utility evaluation of a pair of jeans for males is greater than null).

Claims 18, 24

Stratmann anticipates requiring a security identification of individuals in the first and second sets of individuals before accepting their respective inputs (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; to one of ordinary skill in the art, standard message

protocol will identify both the sender and receiver by name which provides the security identification).

Claims 19, 25

Stratmann anticipates wherein the security identification comprises a password (**Stratmann**, c 1, l 35-48; EN: para 2 above applies; to one of ordinary skill in the art, passwords vary in complexity but can be as simple as an individuals name which is attached to the message as the header).

Claim 20

Stratmann anticipates receiving in the computer system an additional set of weights sent to the computer system by a fifth set of individuals via the data network, the fifth set of individuals not including the first set of individuals, each weight indicating importance of a corresponding criterion from the set of criteria (**Stratmann**, c 2, l 48-50; Fig. 1); receiving, in the computer system via the data network, an additional set of evaluations sent to the computer system by a sixth set of individuals, each evaluation corresponding to possible attributes of a corresponding criterion (**Stratmann**, c 2, l 50-52); and based on the set of evaluations, the additional set of evaluations, the set of weights and the additional set of weights, providing an additional relative analysis of the alternative choices (**Stratmann**, c 2, l 57-63; EN: para 2 above applies; user(s) are synonymous with sets of individuals).

Claims 21, 26

Stratmann anticipates a server coupled to a data network, the server receiving a set of alternative choices and a set of criteria by which the set of alternative choices

may be evaluated (**Stratmann**, c 2, l 40-41; c 2, l 44-45; EN: computers are servers); a first set of client devices coupled to the data network, the first set of client devices transmitting to the server via the data network a set of weights provided by a first set of individuals, each weight indicating importance of a corresponding criterion from the set of criteria (**Stratmann**, c 2, l 48-50; Fig. 1); a second set of client devices coupled to the data network, the second set of client devices transmitting to the server via the data network a set of evaluations provided by a second set of individuals, each evaluation corresponding to possible attributes of a corresponding criteria (**Stratmann**, c 2, l 50-52); wherein the server provides a relative analysis of the alternative choices based on the set of evaluations and the set of weights (**Stratmann**, c 2, l 57-63).

Correspondence Information

16. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (703) 308-3179.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Art Unit: 2121

Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of
"Proposed" or "Draft" for the desk of the Examiner).

Hand-delivered responses should be brought to:

Receptionist, Crystal Park II

2121 Crystal Drive,

Arlington, Virginia.

A handwritten signature in black ink, appearing to be 'J. P. Hirl', written over the printed name.

Joseph P. Hirl

May 10, 2004